STATE OF DELAWARE
Child Death, Near Death and Stillbirth Commission
900 King Street
Wilmington, DE19801-3341

CAPTA[1] REPORT

In the Matter of
D.J.
Minor Child

9-03-2013-00022

February 10, 2015

[1] The federal Child Abuse Prevention and Treatment Act requires the disclosure of facts and circumstances related to a child's near death or death. 42 U.S.C § 5106 a(b)(2)(A)(x). See also, 31 Del.C. § 323 (a).

Background and Acknowledgements

The Child Death, Near Death and Stillbirth Commission ("CDNDSC") was statutorily created in 1995 after a pilot project showed the effectiveness of such a review process for preventing future child deaths. The mission of CDNDSC is to safeguard the health and safety of all Delaware children as set forth in 31 Del.C., Ch., 3.

Multi-disciplinary Review Panels meet monthly and conduct a retrospective review of the history and circumstances surrounding each child's death or near death and determine whether system recommendations are necessary to prevent future deaths or near deaths. The process brings professionals and experts from a variety of disciplines together to conduct in-depth case reviews, create multi-faceted recommendations to improve systems and encourage interagency collaboration to end the mortality of children in Delaware.

The case information presented below is based on documents reviewed and presented from the treating hospitals, the Division of Family Services (DFS), the Office of the Child Advocate, Family Court, Law Enforcement, and the Department of Justice.

Case Synopsis

The male child who is the subject of this review, D.J., was born in November 2011. In December 2011, at one month of age, D.J. presented to the Emergency Department (ED) due to inconsolable crying, respiratory issues, congestion, and vomiting a brownish fluid. While in the ED it was discovered that D.J. had several bruises to his chest, back, and abdomen. It was also discovered during the medical examination that D.J.'s penis was severely bruised and swollen. D.J. was transported to a tertiary children's facility for further evaluation and treatment. Upon evaluation at the tertiary facility, it was discovered that he had sustained three rib fractures.

Family History: Father of the Baby (FOB)

In August 1995, a routine referral was received by the DFS Child Abuse Report and Neglect Report Line alleging the lack of supervision of FOB and his siblings. The Report Line contacted law enforcement in order to check on the welfare of the children. The Report Line never received a call back from law enforcement and therefore it was assumed by hotline staff that the children were not left alone.

During the DFS investigation, the FOB's Mother disclosed that at times FOB could be hard to handle. FOB was enrolled in an outpatient program in order to deal with some of his behavioral issues. However, while enrolled it was determined that FOB's behavioral problems stemmed from his Mother and her inability to care for herself or her children. During outpatient care, FOB exhibited no behavioral problems or issues of concern.

Within days of the initial report to DFS Report line, FOB was admitted to a psychiatric facility as his Mother stated that he threatened to kill himself. Although it was believed that this was a false allegation, the facility admitted FOB for liability purposes. Shortly thereafter, FOB was placed with his maternal aunt. However, the maternal aunt was unable to care for FOB as she stated that he was out of control. It was suggested that an out of home placement, such as a group home, would be best for FOB. The case was substantiated for lack of supervision and transferred to treatment. While the case was in treatment, the treatment caseworker was unable to make contact with the family and the case was closed.

Family History: Mother of the Baby (MOB)

In July 1995, the DFS Report line received an urgent referral alleging the sexual assault of D. J.'s MOB's older half sibling. The identified perpetrator in this case was MOB's father. MOB's half sister, who at the time was 15 years of age, disclosed that MOB's father had oral and vaginal intercourse with her on more than one occasion. Upon such disclosure, DFS immediately contacted law enforcement where a joint investigation was conducted.

A search warrant was obtained, by law enforcement, for the maternal grandfather's residence. During the search and seizure, over 2000 videotapes were discovered. However, of those 2000 videos only 394 were determined to be pornographic and therefore seized. After further examination of the 394 pornographic videotapes, 4 were identified as homemade pornographic videotapes.

Initial interviews conducted by law enforcement revealed that MOB's Mother and Father had admitted to engaging in sexual activity with other adult males. MOB's Mother also disclosed engaging in acts of bestiality while intoxicated. Following the initial questioning, MOB's father later confessed to having oral sex with his half daughter, but denied sexual intercourse or the videotaping of such acts. MOB's Mother denied knowing or suspecting any sexual abuse in the residence.

As it pertained to this investigation, DFS substantiated MOB's Father for sexual abuse, level IV. At the time of the substantiation, he was still awaiting criminal prosecution. Following the substantiation finding, DFS closed its case and determined that treatment services were not necessary. The MOB's half sister moved to Maryland to reside with her grandmother. Prior to case closure, DFS concluded that the other siblings (MOB and her biological Sister) residing in the home were safe. Further, DFS recommended that Mother and her children undergo family counseling as a result of the recent family circumstances.

Three months later, in October 1995, the Child Abuse Report line received its second urgent referral alleging the dependency of MOB's half sister. It was reported that the grandmother in Maryland had not petitioned for custody, relocated and left the half sister with a non-relative. DFS determined that since the child was residing in Maryland, DFS had no planning responsibility. Moreover, DFS acknowledged that the half sister would not be safe in Delaware as MOB's father, who was the perpetrator of her sexual abuse, was still living in the family residence. DFS was concerned that MOB's Mother would not be protective of her daughter.

In January 1996, the DFS Report Line received another report alleging sexual abuse of MOB and her younger sister by MOB's father. It was noted that he had pled guilty to Offensive Touching and received 18 months on work release as a result of the 1995 sexual abuse allegation. The caller reported that MOB, who was seven years of age at the time, was sexually abused by her father. It was reported that the grandmother may have suspected the sexual abuse of MOB while visiting around the holidays, but failed to report it. Maternal grandmother was interviewed by DFS where she reported that she had heard MOB crying and repeatedly saying "Daddy, leave me alone" late one night while visiting. Maternal grandmother never spoke to MOB nor did she report the incident.

The DFS caseworker spoke with MOB at her school where MOB made no concerning disclosures and denied any inappropriate touching. During this investigation neither father nor MOB's younger sister were interviewed. The case was closed as unsubstantiated.

DFS became active again with the family in July 2010, when an urgent referral alleging mild physical neglect of MOB's newborn child, D.J.'s sibling, was received. Upon delivery, MOB and newborn were positive for marijuana and opiates.

As a result of D.J.'s sibling being drug positive, a safety plan was implemented with MOB and the father of the baby (FOB) stating that MOB's Mother would provide supervision as needed. Such supervision entailed MOB's Mother going to the home twice a day, every day, in order to ensure that the infant was safe. MOB's Mother was advised, by DFS, that if she believed the infant was unsafe, due to MOB and FOB's drug withdrawal, then the infant could be removed from the home. The safety plan was agreed upon and signed by all parties involved. The MOB's Father was originally included as a participant in the safety plan. However, during the treatment case, he was removed as a participant due to his civil and criminal history.

After D.J.'s sibling's discharge from the hospital, a home visit was conducted by DFS where the home was determined to be appropriate. Shortly thereafter, the case was closed as unsubstantiated with concern. The case was transferred to treatment as a result of the substance abuse issues.

During the treatment case, it was made known that MOB did not qualify for a methadone treatment program, but instead qualified for a Suboxone program. A substance abuse liaison was referred to the family in order to provide additional resources and services. At this point in time, it was noted that the infant was being followed by Child Development Watch (CDW).

On August 25th, another home visit was conducted by the DFS treatment caseworker and the substance abuse liaison. MOB and FOB were referred to Parents as Teachers and the Safe and Stable Families Program. During this visit, it was noted that FOB was very controlling of MOB. Although they completed their substance abuse intakes, neither parent returned for their recommended treatment.

One month later another home visit was conducted where the DFS caseworker learned that MOB and FOB had been evicted from their home as they were unemployed and unable to pay rent. MOB, FOB, and infant were now residing with MOB's parents until they could find employment or move out-of-state.

In October 2010, the DFS Report Line received an urgent referral alleging the mild physical neglect of MOB's sister by MOB and FOB. Caller reported that adults in the home are using marijuana in front of the children and that there are also concerns of domestic violence between MOB and FOB. DFS responded and observed the children within the home and concluded that the children were clean and appropriately dressed. MOB and her mother admitted to marijuana use. They also disclosed a recent incident in which FOB was taken to an in-patient mental health facility after using Xanax and drinking. MOB's Mother mentioned that MOB's sister was sexually abused by her husband's son. MOB's sister reported that she felt she is safe in her home and denied any inappropriate touching. MOB was referred to complete another substance abuse evaluation. No safety plan was implemented, and no attempts were made to follow up with FOB and any services that he might receive or be eligible for in order to address his issues. In February of 2011, the investigation was closed as unsubstantiated with concern, and

the case remained active in treatment

In March 2011, the DFS treatment caseworker met with MOB and D.J.'s older sibling. MOB informed the caseworker that D.J.'s older sibling was evaluated by CDW when she initiated Safe and Stable Families and it was determined she did not need any services. Mother had been receiving substance abuse treatment. Mother informed the caseworker that she was pregnant with her second child and FOB is the father. At that point in time, FOB was incarcerated but was expected to be released in a few months.

In April, it was noted that MOB continued to attend her substance abuse treatment. FOB was out of prison and initiated counseling at a mental health clinic. FOB had been working six days a week as a cook. It was noted that MOB was making long term plans and FOB was taking action to address his needs. The DFS caseworker noted D.J.'s older sibling was safe. In July 2011, MOB, FOB, and D.J.'s older sibling moved to Seaford and the address was unknown.

On July 26, 2011, the DFS Report Line received a call with on-going concerns of neglect. However the call was screened out. The case was active with DFS treatment at the time.

In October 2011, the treatment case was closed as the family/situation stabilized. Documentation revealed that MOB and D.J.'s older sibling were once again residing with MOB's Mother. MOB's substance abuse treatment had been stopped until after her pregnancy. MOB and FOB were no longer together. D.J.'s older sibling appeared well and there was no concern of abuse/neglect.

D.J.'s Near-Death Incident

In November 2011, D.J. was born at thirty-nine weeks gestation via spontaneous vaginal delivery. At birth he weighed six pounds, four ounces and no congenital anomalies or abnormal conditions were noted. MOB was noted to have a chronic history of Percocet and marijuana use. This was Mother's second pregnancy and live birth that resulted in a positive infant urine drug screen for marijuana and methadone. As a result, the DFS Report Line was contacted and a referral was made alleging mild physical neglect of D.J.

Upon the initial interview of MOB by the DFS investigation caseworker, it was reported that MOB was residing with her parents. MOB reported that she has been active in a methadone program since the beginning of November, approximately 14 days prior to D.J.'s birth. She also admitted that she began abusing Percocet a few months prior to delivery. MOB also indicated that she and FOB were no longer together. Mother denied mental health issues. However, during the initial interview with DFS it was requested that MOB undergo a psychological evaluation in order to determine if she was self-medicating. MOB agreed to comply with this request.

MOB's paramour was also interviewed by DFS where he reported that he and Mother had been together for approximately four months. Paramour had been staying with Mother in order to help care for and support her children. Paramour reported that he was on probation through the Division of Youth Rehabilitative Services (YRS) for felony level charges and will remain active with YRS until he is twenty-one years of age. He also reported that he was receiving treatment for substance abuse.

Shortly after birth, D.J. began to show signs of withdrawal and was treated for Neonatal Abstinence Syndrome. Medical records indicated that D.J. began treatment with oral morphine

which was administered every four hours on day four of life. Morphine was then increased once over the next two days and then decreased on day eight of life. D.J. was weaned from morphine, on day twelve of life, by spacing out the dosing intervals from every four hours to every six hours. On day thirteen of life, D.J. received morphine every twelve hours and thereafter morphine was then administered as needed. D.J. was discharged home to the care of his MOB at 16 days of age.

A home assessment of MOB's parent's residence was conducted on the day of D.J.'s discharge from the hospital. The caseworker expressed concerns to MOB and her parents, over paramour's criminal history and anger issues. The caseworker explained that MOB's paramour, was not to live with MOB and the children due to his criminal history. However, a safety plan was never implemented to reflect this. It was also noted MOB's father is a registered sex offender and MOB's Mother reported active marijuana use in the home. The caseworker was also made aware of an active federal criminal investigation involving MOB's half sister. Her half sister also resided in the home with her daughter. The caseworker cautioned MOB's Mother that MOB will need additional support since D.J. will be experiencing withdrawal symptoms, such as excessive crying. MOB's Mother stated that there are enough people in the home to watch over D.J. and help alleviate any stress that MOB might experience. The caseworker also informed MOB's Mother that marijuana should not be used in the home at any time. The caseworker observed D.J.'s sibling, who appeared to be doing well. No imminent safety concerns were noted. The case was unsubstantiated with concern and transferred to treatment. Concerns noted by the caseworker include: MOB's substance abuse issues; potential domestic violence issues; housing/financial instability; and mental health issues along with a lack of parenting skills.

Three days prior to the near death incident, the DFS treatment caseworker visited the residence where it was alleged that MOB's paramour was now in the home. The caseworker informed MOB that the children are not to be unsupervised with paramour, nor go to his home. However, no safety plan was completed to reflect this. Children were observed to be doing well and no additional concerns were noted by the caseworker.

Three days later, the DFS Report Line received an urgent referral alleging the physical abuse of D.J. by Mother's paramour. Caller reported that MOB had taken D.J. to the ED #1 due to inconsolable crying, respiratory issues, congestion, and vomiting a brownish fluid after feeding just prior to coming to ED. While in the ED, it was discovered that D.J. had several bruises to his chest, back, and abdomen. It was also discovered during the medical examination that D.J.'s penis was severely bruised and swollen. At the time of this report, D.J. was twenty-one days of age. A second shift DFS caseworker responded to the ED and made contact with D.J. and MOB. D.J. was observed by caseworker to have two linear marks on his chest, a linear dark blue bruise to the middle of his back, and three small bruises to the left side of his lower back.

Law enforcement was contacted and arrived at the hospital. MOB was interviewed and she was unable to provide an explanation consistent with D.J.'s injuries. MOB further reported that D.J. and his sibling had been left in the care of her paramour, and paramour's grandmother. D.J. was left in their care as MOB was going to receive treatment at the methadone clinic. MOB estimated that she was gone for approximately three hours. MOB reported that upon her return, paramour had just given D.J. a bath and she noticed that D.J. was having trouble breathing. MOB indicated that she did not see any bruising on D.J. until she arrived at the ED. MOB further advised that she contacted paramour about D.J.'s swollen penis and paramour stated that when D.J. voided, feces was stuck to his penis. Therefore, in order to clean up the feces, paramour had to wipe around D.J's penis, and he may have scrubbed too hard.

A Sexual Assault Nurse Exam (SANE) was performed within twenty-four hours of D.J.'s arrival to the ED #1. The photographs revealed bruising and swelling to his penis, as well as bruising to his chest and back. Moreover, on the left side of D.J.'s back it appeared that the bruising was linear in fashion and resembled the outline of three fingers. D.J. was transported to a tertiary children's facility for further evaluation and treatment. Upon evaluation at the tertiary children's facility, it was discovered that D.J. had sustained three rib fractures.

That same day, law enforcement interviewed MOB's paramour. Paramour was informed that he was not under arrest; however, paramour was read his Miranda warnings and acknowledged his understanding of them. Paramour admitted to being the caregiver for D.J. while Mother had gone to the methadone clinic. Paramour also admitted to changing D.J.'s diaper after he had a bowel movement and demonstrated to the Detective how D.J.'s penis was cleaned. Paramour's demonstration showed that he twisted D.J.'s penis with some force. Paramour was asked about the bruising to D.J.'s back and paramour advised that the bruising could be a result of swaddling D.J. too tight.

Subsequently, a consultation with Delaware's Child Abuse Expert was completed by law enforcement. It was determined that D.J. had a number of odd bruises across the chest and near his right elbow. D.J. had severe bruising to the penis and scrotum, which was not accidental. Additionally, D.J. had four fractured ribs, three on the left side and one on the right side. The three broken ribs on the left side coincide with the fingerprints on D.J.'s back. D.J. also had a fracture to his left tibia, just above the ankle. The Child Abuse Expert advised that D.J.'s injures were a result of squeezing D.J.'s chest. Based upon MOB's account and her statements that D.J. had no bruising the night before or the morning of the near death incident, the Child Abuse Expert believed that the bruising and injuries were recent, within the last twelve hours.

Paramour's grandmother was also interviewed by law enforcement. During the initial interview, she was unable to provide any information as she advised that she was not caring for D.J. However, upon her agreement to a polygraph examination, grandmother was able to provide insight into paramour's demeanor on the day of D.J.'s near death incident. Grandmother advised that at one point she found paramour throwing D.J.'s sister into the play pen. An argument ensued over this incident. Grandmother checked on D.J.'s sibling and she appeared fine.

As a result of the injuries sustained to D.J., DFS petitioned for and was granted custody of D.J. and his older sibling. Soon after, a guardian *ad litem* was appointed in order to represent the best interests of the children. Both children were placed in foster care as MOB's parents were ruled out as appropriate placements due to their extensive history with DFS. Furthermore, D.J.'s biological father was also ruled out as a placement option as he had no contact with either D.J. or his older sibling in the last six months.

Criminal /Civil Disposition

In January 2012, paramour was arrested and charged with felony level Assault by Abuse and Neglect. In July 2012, paramour was found guilty of felony level Assault in the Second Degree and was sentenced to 8 years, level V; suspended to 1 year, level IV; suspended to 2 years, level III probation.

System Recommendations

After review of the facts and findings of this case, the Commission determined that all systems did not meet the current standards of practice and therefore the following system recommendations were put forth:

DIVISION OF FAMILY SERVICES

1. CDNDSC recommends that the Division of Family Services' (DFS) Collateral Contact Information Sheet be amended to include questions pertaining to Neonatal Abstinence Syndrome, as well as to document DFS concern of substance abuse, physical abuse, sexual abuse, emotional maltreatment, and neglect.
    a. Rationale: Collateral contacts are not descriptive enough as to why the child and/or family are involved with DFS. If parents have signed consent forms, then information should be made readily available to DFS, the primary care physician and other parties involved in the care of the child. Information that DFS may not deem relevant may be of significance to other parties involved.
    b. Anticipated Result: More appropriate communication among DFS and other professionals as it pertains to the history of the child.
    c. Responsible Agency: Division of Family Services

2. CDNDSC recommends that in serious injury cases, the Division of Family Services'(DFS) caseworker contact the Department of Justice Child Protection Unit of the Family Division, so that a determination can be made as to whether or not custody should be sought OR a safety plan should be implemented
    a. Rationale: Even though a federal investigation was ongoing due to the child pornography, children were not removed from the home until the time of the near death incident.
    b. Anticipated Result: To ensure the safety of children active with DFS
    c. Responsible Agency: Division of Family Services

3. CDNDSC recommends that cases involving multigenerational or chronic patterns of child abuse and/or neglect be given a higher level of supervisory oversight than cases without such history.
    a. Rationale: The Division of Family Services (DFS) failed to properly investigate allegations of child abuse and neglect or address such issues once they were made known. As a result, DFS failed to properly identify risk and ensure the safety and well being of each child residing in the home
    b. Anticipated Result: To ensure the safety of children
    c. Responsible Agency: Division of Family Services

4. CDNDSC recommends that the Division of Family Services (DFS) reassess a caseworker's ability to close an investigation case prematurely when substance abuse and/or mental health was not properly assessed by a professional.
    a. Rationale: Proper mental health and substance abuse evaluations of participants within the case are not being appropriately conducted prior to case closure. For instance, substances abuse evaluations are not being completed in investigation and therefore treatment workers lack the enforcement to compel compliance of parent/caretaker.

b. Anticipated Result: Proper assessments, evaluations and referrals to be completed during investigation and prior to case closure, so that if such requests are not met by the participant, DFS can file a motion to compel.
c. Responsible Agency: Division of Family Services

5. CDNDSC recommends that the Division of Family Services research and implement a yearly mandatory program to assess/address compassion fatigue, burnout, and vicarious trauma among employees.
    a. Rationale: This program should be implemented as a result of the poor decision that occurred by the caseworker as a result of the complexity of this case.
    b. Anticipated Result: Implementation of a program that will help caseworkers address vicarious trauma, burnout and compassion fatigue that is brought on by cases of abuse/neglect.
    c. Responsible Agency: Division of Family Services

6. CDNDSC recommends that the Division of Family Services (DFS) revise policy as it pertains to the use of safety plans and the identification of appropriate caregivers.
    a. Rationale: During the 2011 investigation, maternal grandmother was deemed to be an appropriate caregiver despite having an extensive history with DFS.
    b. Anticipated Result: To ensure the safety of children
    c. Responsible Agency: Division of Family Services

7. CDNDSC recommends that the Division of Family Services (DFS) revise policy as it pertains to the use of safety plans and the identification of appropriate caregivers.
    a. Rationale: There were several instances where safety plans were not implemented, despite risk factors being present in the home. In addition, the DFS caseworker instructed the family to not allow the baby to be unsupervised with the paramour but this was not documented in a safety plan.
    b. Anticipated Result: To ensure the safety of children
    c. Responsible Agency: Division of Family Services

8. CDNDSC recommends that the Division of Family Services (DFS) consider adding multi-generational history to the current six supplements of the Structured Decision Making (SDM) Risk Assessment Tool. It is a key factor in assessing the risk and/or continued risk that is posed to a child.
    a. Rationale: This family had a multi-generational history of abuse and neglect. However, it was not always considered in assessing the risk in the home.
    b. Anticipated Result: To ensure the safety of children
    c. Responsible Agency: Division of Family Services

9. CDNDSC recommends that the Division of Family Services (DFS) consider revising its policy related to parental substance abuse. Specifically, assessing whether substance abuse is a risk factor during an investigation, making referrals to the substance abuse liaison, and ensuring compliance with substance abuse evaluations or treatment.
    a. Rationale: The Mother of the baby continued to struggle with her addiction which put the baby at risk especially since the baby was suffering from Neonatal Abstinence Syndrome.
    b. Anticipated Result: To ensure the safety of children
    c. Responsible Agency: Division of Family Services

MEDICAL

10. CDNDSC recommends that Delaware Hospitals with a nursery status of I or II be trained in the recommended treatment of Neonatal Abstinence Syndrome (NAS) according to the American Academy of Pediatrics.
    a. Rationale: Child was inappropriately weaned from morphine
    b. Anticipated Result: Training of medical personnel on NAS
    c. Responsible Agency: Delaware Hospitals

11. For cases in which an infant is born drug addicted, CDNDSC recommends that Delaware Hospitals make a referral to the hospital's social worker or discharge planner to assess the family situation and address any substance abuse issues prior to discharge.
    a. Rationale: Infant was discharged without ensuring that proper support services were in place for the infant.
    b. Anticipated Result: Services will be given to the family to reduce risk in the home.
    c. Responsible Agency: Delaware Hospitals

12. CDNDSC recommends that Delaware Hospitals consider developing policy to refer all cases in which an infant is born drug exposed to Delaware's Help Me Grow project, which provides a centralized telephone access point through 211 and connects families to appropriate community resources, particularly evidence-based home visiting programs for pregnant women and mothers.
    a. Rationale: Infant was discharged without ensuring that proper support services were in place for the infant.
    b. Anticipated Result: Home visiting services are evidence-based to reduce risk within the family.
    c. Responsible Agency: Delaware Hospitals

13. CDNDSC recommends that evidence-based home visiting programs through the Delaware Help Me Grow project contact the Division of Family Services' (DFS) Child Abuse and Neglect Report Line in cases in which the infant was born drug exposed and the family declines services, is non-compliant with services, or there are concerns of abuse or neglect.
    a. Rationale: Since home visiting programs are voluntary, non-compliant families may need case management from DFS.
    b. Anticipated Result: Infants born drug exposed will be evaluated for risk within their families.
    c. Responsible Agency: Division of Public Health